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SUBJECT: KENYA: AMID CONTROVERSY KIBAKI REAPPOINTS
CORRUPTION CZAR RINGERA

Classified By: AMBASSADOR RANNEBERGER FOR REASONS 1.5 (b)(d)

11. (C) On August 31, President Kibaki appointed Justice Aaron Ringera to a second five-year term as Director of the Kenyan Anti-Corruption Commission (KACC). The immediate response from the KACC Advisory Board, reformist elements, Parliament, civil society, and ordinary Kenyans was strongly negative due to Ringera's failure over the past five years to bring any charges against senior government officials, and the unilateral--possibly illegal--manner of his reappointment. Despite statements to the contrary by the Minister of Justice and the Vice President, the process does appear to be illegal and, at a minimum, is a direct slap in the face to those calling for action on accountability and steps against corruption as part of the reform agenda. Embassy has issued a statement condemning the unilateral nature of the reappointment (para 10). The Minister of Justice (who orchestrated the reappointment) reacted strongly to our statement, and the Foreign Minister called the Ambassador to protest it. The statement has been welcomed by civil society, pro-reform elements in the government, pro-reform MPs, and ordinary Kenyans. Reformists in Parliament and civil society are insisting that the reappointment be reviewed. The Speaker of the Parliament has presided over debate on Ringera's reappointment, and two committees are examining the legality of the reappointment process. We have offered research and analytical support for this endeavor through USAID's Parliamentary Strengthening program. The fact that the reappointment was made despite Ringera's total lack of credibility and without transparency or consultation calls into serious question the government's political will to fight corruption and to implement the broader reform agenda. End Summary

12. (C) On August 31, President Mwai Kibaki appointed Justice Aaron Ringera to a second five-year term beginning September 8 as Director of the Kenyan Anti-Corruption Commission (KACC). Kibaki's decision to reappoint Ringera came amidst controversy as both civil society groups and reformist MPs have long been calling for a fresh face at the KACC. The KACC Advisory Board was expecting to review candidates to replace Ringera at a meeting on September 2. Kibaki moved to pre-empt the board, whose statute mandates that it "recommend to Parliament persons to be appointed as Director or Assistant Directors," which after Parliamentary vetting the President then appoints. The Board has subsequently indicated in writing that the reappointment of Ringera and two others was illegal. They have accepted that Ringera should remain in office but only until a new appointment is made.

13. (C) Sources indicate that the reappointment was planned by Minister for Justice Mutula Kilonzo, Ringera, and Head of Civil Service Francis Muthaura. The President was reportedly pressured to reappoint Ringera because the alternative, Ahmed Nasir Abdullahi (a respected former chair of the Law Society of Kenya), was considered by Kilonzo and Muthaura to be a threat to cabinet ministers and members of the President's family who are allegedly involved in corruption. Kibaki

reportedly asked them if there would be any blow back and they said no. They were badly mistaken.

¶4. (C) The Prime Minister confirmed to the Ambassador that he was not consulted. The Prime Minister said that when he complained to President Kibaki about the absence of consultation, Kibaki "dug in his heels." A number of other ministers have privately expressed dismay at the reappointment.

¶5. (SBU) Kenyan civil society has expressed outrage over Ringera's reappointment. Collectively, civil society had been calling for some time for Ringera not to be appointed for a second term. In the aftermath of President Kibaki's announcement, they have called on him to revoke the appointment. Transparency International's Director Job Ogonda summarized civil society views:

"Public service legitimacy depends on the faithfulness of public service to the aspirations of the citizens. The track record of KACC is testimony of betrayal of this principle. No politically significant corruption case has been successfully investigated by KACC. While the reasons for this dismal performance lies with the President, cabinet, judiciary, Attorney General's office and Parliament, the buck stops with the head of the anti-corruption oversight institution. He should have recognized the structural and policy weaknesses that were going to lead to this failure, and resigned. Or fought for fundamental reforms in a way that was both visible and credible. This appointment underlines the government's lack of commitment to accountability."

¶6. (SBU) Many members of Parliament are reacting very negatively, claiming the reappointment is illegal and must be reviewed. As a protest, Parliamentarians refused to allow Parliament to adjourn for six weeks as had been planned, extending the session to debate this issue. During vociferous debates, MPs are speaking out on the government's attempts to circumvent the law. They are also pointing out that, with no major convictions in the past five years, Ringera is not competent to continue for another term. Parliamentarians attempted to strip KACC funding from an appropriations bill yesterday (which would in effect dissolve the body), but Finance Minister Uhuru Kenyatta withdrew the bill before the amendment could be introduced.

¶7. (C) The Speaker of the Parliament has presided over debate on Ringera's reappointment, and two committees are examining the legality of the reappointment process. We are mobilizing support for these committees, offering research and analytical support for this endeavor through USAID's Parliamentary Strengthening program. Of particular concern to the committees is the question of why the government very recently closely adhered to the prescribed appointment guidelines (i.e., Advisory Board nominates, Parliament approves, President appoints) with regards to two Deputy Commissioners but then chose to circumvent the process with Ringera. The Speaker has told the Ambassador that he considers the appointment illegal.

¶8. (SBU) Ringera's reappointment has dominated print, radio and television news, and the Embassy statement (para 11) received wide media coverage. Simultaneously with the release of the September 3 statement, the Ambassador was interviewed on several radio stations. Later in the day, KTN's popular TV program, "Diplomatic Perspectives," with its influential anchor, Beatrice Marshall, hosted the Ambassador. An informal TV call-in poll done by two TV stations showed 68 percent welcoming the U.S. statement and support for reforms. The September 4 editions of the print media gave a straight-forward account of the unfolding events surrounding the Ringera reappointment.

Comment

¶9. (C) After five years in office, the record of Justice Ringera is clear: no recommendations for prosecution and zero convictions of any high-level government official, despite

pervasive corruption scandals in which senior officials are implicated. Instead of fighting for convictions -- or resigning because of the KACC's inability to overcome the government forces aligned against the organization's implementation of its mandate, if that is the case -- Ringera is part of the shell game organized within the GOK to prevent accountability for corruption. The fact that the reappointment was made despite Ringera's total lack of credibility and without transparency or consultation calls into serious question the government's political will to fight corruption and to implement the broader reform agenda.
End Comment.

Embassy Statement - September 3

110. (U) In response to requests from civil society and reformist MPs, we issued a strong statement. Foreign Minister Wetangula called the Ambassador to protest the statement.

Begin Text:

The United States Government is deeply concerned about the unilateral reappointment of Justice Aaron Ringera as Director of the Kenya Anti-Corruption Commission (KACC). The reappointment, and the manner in which it was done, raise profoundly troubling questions, particularly given the poor record of performance of the KACC over the past five years. Serious questions regarding the poor performance of the KACC have been consistently and strongly raised by civil society, stakeholders, Members of Parliament, and others. The very negative public reaction to the reappointment shows how little confidence the Kenyan people have in the KACC.

We are concerned that the reappointment was apparently made without proper consultation. The KACC Advisory Board has the responsibility to make recommendations for candidates for Director and Assistant Directors to the Parliament, which vets and approves those candidates, and sends the names of approved candidates to the President for him to appoint. While not strictly required, it would also have been appropriate - and a sign of good faith to fight corruption - to consult broadly with civil society. Lack of consultation and transparency call into serious question the government's commitment to end the culture of impunity through decisive steps to fight corruption and to implement key reforms.

We urge that Justice Ringera's reappointment be re-examined in accordance with appropriate procedures and through a process of broad consultation. The United States will continue to support the insistence of the Kenyan people that fundamental reforms be fully implemented, as agreed in the National Accord of 2008.

End Text.

RANNEBERGER